

TEMPORARY CONSTRUCTION EASEMENT-"Exhibit D"

THIS TEMPORARY CONSTRUCTION EASEMENT (the "**Agreement**") is entered into as of this ____ day of _____, 2008 (the "**Effective Date**") by [i] **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT** ("**Grantor**") whose address is 527 W. Jefferson Street, Louisville, Kentucky 40202, in favor of [ii] **21st CENTURY PARKS, INC.**, a Kentucky non-profit corporation, whose address is 471 West Main Street, Suite 202, Louisville, Kentucky 40202 ("**Grantee**").

W I T N E S S E T H:

WHEREAS, Grantor is the owner of approximately _____ acres of land located in Jefferson County, Kentucky, more particularly described on **Exhibit A** (the "**Property**");

WHEREAS, Grantor has previously recorded that certain Deed Restriction dated _____, 200__, of record in Deed Book _____, Page _____, in the Office of the Clerk of Jefferson County, Kentucky (the "**Deed Restriction**");

WHEREAS, Grantor desires to enter into this Agreement to create in favor of Grantee, its successors and assigns, the temporary easement more particularly described below which will assist Grantee in developing and constructing the Property in accordance with the Parks and Open Space Master Plan developed by Grantee (the "**Master Plan**"); and

WHEREAS, construction of the Property will be done in accordance with the Master Plan, which is of great importance to Grantor, Grantee, the people of Louisville Metro/Jefferson County, Kentucky and the people of the Commonwealth of Kentucky;

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor hereby agrees as follows:

1. **Grant of Temporary Construction Easement.** Grantor hereby grants and conveys to Grantee an easement [i] to perform the construction on the Property it deems necessary to complete the Master Plan, and [ii] to have vehicular and pedestrian access, ingress and egress on, over and across the Property for the purpose of completing the Master Plan (the "**Construction Easement**").

2. **Term.** The term of the Construction Easement granted herein shall be for five (5) years beginning as of the Effective Date (the "**Term**"). The Term may be extended for an additional five (5) years by the Grantee if construction of the Master Plan is not complete. If the construction of the Property in accordance with the Master Plan is not completed within the Term and the extension, the parties may mutually agree to extend the Term until such construction is completed.

3. **Execution of Other Documents.** The parties agree to execute such other agreements as may be necessary or desirable to confirm the use and enjoyment of the benefits granted herein.

4. **Amendment and Modifications.** This Agreement may not be modified except by written agreement executed by Grantor and Grantee.

5. **Entire Agreement.** This Agreement and the Deed Restriction constitute the entire agreement between the Grantor and the Grantee relating to its subject matter. This Agreement supersedes, in all respects, all prior written or oral agreements between the parties related thereto, and

there are no agreements, understandings, warranties or representations between Grantor and Grantee except for the Deed Restriction which shall remain in full force and effect in accordance with its terms.

6. **Binding Effect and Assignment.** This Agreement shall run with the land, shall be binding upon Grantor, its successors and assigns, and shall inure to the benefit of the Grantee, its successors and assigns and Grantee's agents and invitees.

7. **Severability.** The parties agree that each provision of this Agreement shall be construed independent of any other provision. The invalidity or unenforceability of any particular provision of this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

8. **Recording.** This Agreement shall be recorded in the Office of the Clerk of Jefferson County, Kentucky.

9. **Governing Law.** This Agreement and the obligations of the parties hereunder shall be governed by and shall be construed in accordance with the laws of the Commonwealth of Kentucky in all respects.

[signatures on next page]

IN TESTIMONY WHEREOF, witness the signature of the Grantor as of the date and year first above written.

GRANTOR:

Approved as to form:

**LOUISVILLE/JEFFERSON COUNTY
METRO GOVERNMENT**

Michael J. O'Connell
Jefferson County Attorney

By _____
Jerry E. Abramson, Mayor

COMMONWEALTH OF KENTUCKY)
):SS
COUNTY OF JEFFERSON)

The foregoing instrument was acknowledged before me this ____ day of _____, 2008, by Jerry E. Abramson, as the Mayor of Louisville/Jefferson County Metro Government, on behalf of said entity.

My commission expires: _____.

NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

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EXHIBIT A

(Legal Description of Grantor's Property)